

1 Karen V. Weil, Bar No. 145066
2 David N. Weiss, Bar No. 180673
3 **Knobbe, Martens, Olson & Bear, LLP**
4 10100 Santa Monica Boulevard, Suite 1600
5 Los Angeles, California 90067
Telephone: (310) 551-3450
Facsimile: (310) 551-3458
kweil@kmob.com
dweiss@kmob.com

6 Joseph F. Jennings, Bar No. 145920
7 Thomas P. Krzeminski, Bar No. 213714
8 Karen M. Cassidy, Bar No. 272114
9 **Knobbe, Martens, Olson & Bear, LLP**
10 2040 Main Street, Fourteenth Floor
11 Irvine, California 92614
Telephone: (949) 760-0404
Facsimile: (949) 760-9502
jjennings@kmob.com
tpk@kmob.com
karen.cassidy@kmob.com

12 Attorneys for Plaintiffs and Counter-Defendant
Henry Company LLC, Henry Company Canada, Inc.

(List of Attorneys Continued on Next Page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HENRY COMPANY LLC, HENRY COMPANY CANADA, INC.

Plaintiffs.

V.

SASOL WAX NORTH AMERICA CORP., SASOL WAX GmbH.

Defendants.

SASOL WAX NORTH AMERICA
CORP., SASOL WAX GmbH.

Counter-Claimants.

V.

HENRY COMPANY LLC,

Counter-Defendant.

Case No. 2:11-cv-06444-JFW-CW

**STIPULATED PROTECTIVE
ORDER**

Note changes made by court

1 John A. O'Malley, Bar No. 101181
2 Lesley E. Swanson, Bar No. 271903
2 **Fulbright & Jaworski L.L.P.**
3 555 South Flower Street
4 Forty-First Floor
5 Los Angeles, California 90071
6 Telephone: (213) 892-9200
7 Facsimile: (213) 892-9494
8 jomalley@fulbright.com
9 lswanson@fulbright.com

10 Michael E. Wilson, Texas Bar No. 21704650
11 (admitted *pro hac vice*)
12 **Fulbright & Jaworski L.L.P.**
13 1301 McKinney, Suite 5100
14 Houston, Texas 77010
15 Telephone: (713) 651-5151
16 Facsimile: (713) 651-5246
17 mikewilson@fulbright.com

18 Attorneys for Defendants and Counter-Claimants
19 Sasol Wax North America Corp. and Sasol Wax GmbH

1 1. **PURPOSES AND LIMITATIONS**

2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court pursuant to Fed. R. Civ. P 26(c) to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4 below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Judge Walter's Standing Order (Dkt. No. 4) in this case and Civil Local Rule 79-5 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. **DEFINITIONS**

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY.”

5 2.6 Disclosure or Discovery Material: all items or information, regardless
6 of the medium or manner in which it is generated, stored, or maintained (including,
7 among other things, testimony, transcripts, and tangible things), that are produced
8 or generated in disclosures or responses to discovery in this matter.

9 2.7 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who (1) has been retained by a Party or its counsel to
11 serve as an expert witness or as a consultant in this action, (2) is not a past or
12 current employee of a Party or of a Party's competitor, and (3) at the time of
13 retention, is not anticipated to become an employee of a Party or of a Party's
14 competitor.

15 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
16 Information or Items: extremely sensitive “Confidential Information or Items,”
17 disclosure of which to another Party or Non-Party would create a substantial risk of
18 serious harm that could not be avoided by less restrictive means.

19 2.9 House Counsel: attorneys who are employees of a Party to this action.
20 House Counsel does not include Outside Counsel of Record or any other outside
21 counsel.

22 2.10 Non-Party: any natural person, partnership, corporation, association, or
23 other legal entity not named as a Party to this action.

24 2.11 Outside Counsel of Record: attorneys who are not employees of a
25 Party to this action but are retained to represent or advise a party to this action and
26 have appeared in this action on behalf of that Party or are affiliated with a law firm
27 which has appeared on behalf of that party.

1 2.12 Party: any party to this action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this action.

6 2.14 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.15 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY.”

13 2.16 Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
19 compilations of Protected Material; and (3) any testimony, conversations, or
20 presentations by Parties or their Counsel that might reveal Protected Material.
21 However, the protections conferred by this Stipulation and Order do not cover the
22 following information: (a) any information that is in the public domain at the time
23 of disclosure to a Receiving Party or becomes part of the public domain after its
24 disclosure to a Receiving Party as a result of publication not involving a violation
25 of this Order, including becoming part of the public record through trial or
26 otherwise; and (b) any information known to the Receiving Party prior to the
27 disclosure or obtained by the Receiving Party after the disclosure from a source
28 who obtained the information lawfully and under no obligation of confidentiality to

1 the Designating Party. Any use of Protected Material at trial shall be governed by a
2 separate agreement or order.

3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition shall be
7 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
8 or without prejudice; and (2) final judgment herein after the completion and
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
10 including the time limits for filing any motions or applications for extension of time
11 pursuant to applicable law.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**
14 Each Party or Non-Party that designates information or items for protection under
15 this Order must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. To the extent it is practical to do so, the
17 Designating Party must designate for protection only those parts of material,
18 documents, items, or oral or written communications that qualify – so that other
19 portions of the material, documents, items, or communications for which protection
20 is not warranted are not swept unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations
22 that are shown to be clearly unjustified or that have been made for an improper
23 purpose (e.g., to unnecessarily encumber or retard the case development process or
24 to impose unnecessary expenses and burdens on other parties) expose the
25 Designating Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it
27 designated for protection do not qualify for protection at all or do not qualify for the
28

1 level of protection initially asserted, that Designating Party must promptly notify all
2 other Parties that it is withdrawing the mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in
4 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
6 under this Order must be clearly so designated before the material is disclosed or
7 produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents,
10 but excluding transcripts of depositions or other pretrial or trial proceedings), that
11 the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains
13 protected material. If only a portion or portions of the material on a page qualifies
14 for protection, the Producing Party also must clearly identify the protected
15 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
16 for each portion, the level of protection being asserted.

17 A Party or Non-Party that makes original documents or materials available
18 for inspection need not designate them for protection until after the inspecting Party
19 has indicated which material it would like copied and produced. During the
20 inspection and before the designation, all of the material made available for
21 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY.” After the inspecting Party has identified the documents it wants copied
23 and produced, the Producing Party must determine which documents, or portions
24 thereof, qualify for protection under this Order. Then, before producing the
25 specified documents, the Producing Party must affix the appropriate legend
26 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY”) to each page that contains Protected Material. If only a portion or portions
28 of the material on a page qualifies for protection, the Producing Party also must

1 clearly identify the protected portion(s) (e.g., by making appropriate markings in
 2 the margins) and must specify, for each portion, the level of protection being
 3 asserted.

4 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 5 that the Designating Party identify on the record, before the close of the deposition,
 6 hearing, or other proceeding, all protected testimony and specify the level of
 7 protection being asserted. When it is impractical to identify separately each portion
 8 of testimony that is entitled to protection and it appears that substantial portions of
 9 the testimony may qualify for protection, the Designating Party may invoke on the
 10 record (before the deposition, hearing, or other proceeding is concluded) a right to
 11 have up to 21 days to identify the specific portions of the testimony as to which
 12 protection is sought and to specify the level of protection being asserted. Only those
 13 portions of the testimony that are appropriately designated for protection within the
 14 21 days shall be covered by the provisions of this Stipulated Protective Order.
 15 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
 16 afterwards if that period is properly invoked, that the entire transcript shall be
 17 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 18 EYES ONLY.”

19 Parties shall give the other parties notice if they reasonably expect a
 20 deposition, hearing, or other proceeding to include Protected Material. ~~so that the~~
 21 ~~other parties can ensure that only authorized individuals who have signed the~~
 22 ~~“Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those~~
 23 ~~proceedings.~~ The use of a document as an exhibit at a deposition shall not in any
 24 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
 25 – ATTORNEYS’ EYES ONLY.”

26 Transcripts containing Protected Material shall have an obvious legend on
 27 the title page that the transcript contains Protected Material, and the title page shall
 28 be followed by a list of all pages (including line numbers as appropriate) that have

1 been designated as Protected Material and the level of protection being asserted by
2 the Designating Party. The Designating Party shall inform the court reporter of
3 these requirements. Any transcript that is prepared before the expiration of a 21-day
4 period for designation shall be treated during that period as if it had been designated
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
6 otherwise agreed. After the expiration of that period, the transcript shall be treated
7 only as actually designated.

8 (c) for information produced in some form other than documentary and for
9 any other tangible items, that the Producing Party affix in a prominent place on the
10 exterior of the container or containers in which the information or item is stored the
11 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY.” If only a portion or portions of the information or item warrant
13 protection, the Producing Party, to the extent practicable, shall identify the
14 protected portion(s) and specify the level of protection being asserted.

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive
17 the Designating Party’s right to secure protection under this Order for such
18 material. Upon timely correction of a designation, the Receiving Party must make
19 reasonable efforts to assure that the material is treated in accordance with the
20 provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time. Unless a prompt challenge to a
24 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
25 substantial unfairness, unnecessary economic burdens, or a significant disruption or
26 delay of the litigation, a Party does not waive its right to challenge a confidentiality
27 designation by electing not to mount a challenge promptly after the original
28 designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process by providing written notice of each designation it is challenging
3 and describing the basis for each challenge in accordance with Judge Walter's
4 Standing Order in this case if it applies, and if not, in accordance with Civil Local
5 Rule 37-1. A Challenging Party may also provide the Designating Party a written
6 notice identifying documents it intends to file with the court, but agreeing that such
7 documents qualify for protection under Fed. R. Civ. P. 26(c), in order to initiate the
8 Designating Party to file an application to file documents under seal. To avoid
9 ambiguity as to whether a challenge has been made, the written notice must recite
10 that the challenge to confidentiality is being made in accordance with this specific
11 paragraph of the Protective Order. The parties shall attempt to resolve each
12 challenge in good faith and must begin the process by conferring directly in
13 accordance with Judge Walter's Standing Order in this case if it applies, and if not,
14 in accordance with Civil Local Rule 37-1. In conferring, the Challenging Party
15 must explain the basis for its belief that the confidentiality designation was not
16 proper and must give the Designating Party an opportunity to review the designated
17 material, to reconsider the circumstances, and, if no change in designation is
18 offered, to explain the basis for the chosen designation. The Parties may proceed to
19 the next stage of the challenge process only if they have engaged in this meet and
20 confer process first or if the Challenging Party establishes that the Designating
21 Party is unwilling to participate in the meet and confer process in a timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
23 court intervention, and the challenge involves 3 or fewer documents, the
24 Designating Party shall file and serve an application to file documents under seal
25 within 2 court days after receipt of the written notice pursuant to Judge Walter's
26 Standing Order in this case. If the Parties cannot resolve a challenge without court
27 intervention, and the challenge involves more than 3 documents, the Parties shall
28 prepare a joint application to file documents under seal pursuant to Judge Walter's

1 Standing Order in this case. The joint application shall be prepared in the manner
2 and within the periods set forth in Civil Local Rule 37-2. The Parties may agree to
3 enlarge the period for dispute resolution and the period for filing an application to
4 seal or a joint application to seal if such enlargement does not interfere with a Court
5 imposed deadline. Failure by the Designating Party to file an application to seal
6 including the required declaration within the period(s) set forth above shall
7 automatically waive the confidentiality designation for each challenged designation.

8 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges and those made for an improper purpose
10 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the Challenging Party to sanctions. Unless the Designating Party has waived
12 the confidentiality designation by failing to file a motion to retain confidentiality as
13 described above, all parties shall continue to afford the material in question the
14 level of protection to which it is entitled under the Producing Party's designation
15 until the court rules on the challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this
19 case only for prosecuting, defending, or attempting to settle this litigation. Such
20 Protected Material may be disclosed only to the categories of persons and under the
21 conditions described in this Order. When the litigation has been terminated, a
22 Receiving Party must comply with the provisions of section 15 below (FINAL
23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
4 as employees of said Outside Counsel of Record to whom it is reasonably necessary
5 to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including House Counsel) of
7 the Receiving Party to whom disclosure is reasonably necessary for this litigation
8 and who have signed the “Acknowledgment and Agreement to Be Bound” that is
9 attached hereto as (Exhibit A);

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary;

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information; and

19 (h) professional jury or trial consultants, and Professional Vendors to
20 whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

22 **7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES**
23 **ONLY” Information or Items.** Unless otherwise ordered by the court or permitted in
24 writing by the Designating Party, a Receiving Party may disclose any information
25 or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
26 only to:

27 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
28 as employees of said Outside Counsel of Record to whom it is reasonably necessary

to disclose the information for this litigation;

(b) Designated House Counsel of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(d) the court and its personnel;

(e) court reporters and their staff;

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name(s) of the Designated House Counsel and the city and state of his or her residence and (2) describes each Designated House Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may become involved in any competitive decision-

1 making. Sasol Wax GmbH and Sasol Wax North America Corp., together may
2 designate a total of five (5) Designated House Counsel. Henry Company LLC and
3 Henry Company Canada, Inc. together may designate a total of five (5) Designated
4 House Counsel.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

22 (b) A Party that makes a request and provides the information specified in
23 the preceding respective paragraphs may disclose the subject Protected Material to
24 the identified Designated House Counsel or Expert unless, within 7 days of

26 ¹ If the Expert believes any of this information is subject to a confidentiality
27 obligation to a third-party, then the Expert should provide whatever information the
28 Expert believes can be disclosed without violating any confidentiality agreements,
and the Party seeking to disclose to the Expert shall be available to meet and confer
with the Designating Party regarding any such engagement.

1 delivering the request, the Party receives a written objection from the Designating
2 Party. Any such objection must set forth in detail the grounds on which it is based.

3 (c) A Party that receives a timely written objection must meet and confer
4 with the Designating Party (through direct voice to voice dialogue) to try to resolve
5 the matter by agreement within 7 days of the written objection. If no agreement is
6 reached, the Party seeking to make the disclosure to Designated House Counsel or
7 the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
8 with Civil Local Rule 79-5 and Judge Walter's Standing Order, if applicable)
9 seeking permission from the court to do so. Any such motion must describe the
10 circumstances with specificity, set forth in detail the reasons why disclosure to
11 Designated House Counsel or the Expert is reasonably necessary, assess the risk of
12 harm that the disclosure would entail, and suggest any additional means that could
13 be used to reduce that risk. In addition, any such motion must be accompanied by a
14 competent declaration describing the parties' efforts to resolve the matter by
15 agreement (i.e., the extent and the content of the meet and confer discussions) and
16 setting forth the reasons advanced by the Designating Party for its refusal to
17 approve the disclosure.

18 In any such proceeding, the Party opposing disclosure to Designated
19 House Counsel or the Expert shall bear the burden of proving that the risk of harm
20 that the disclosure would entail (under the safeguards proposed) outweighs the
21 Receiving Party's need to disclose the Protected Material to its Designated House
22 Counsel or Expert.

23 8. NOT USED

24 9. NOT USED

25 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
26 IN OTHER LITIGATION

27 If a Party is served with a subpoena or a court order issued in other litigation
28 that compels disclosure of any information or items designated in this action by

1 another Party or Non-Party as "CONFIDENTIAL," or "HIGHLY
 2 CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

3 (a) promptly notify in writing the Designating Party (such notification
 4 shall include a copy of the subpoena or court order);

5 (b) promptly notify in writing the party who caused the subpoena or order
 6 to issue in the other litigation that some or all of the material covered by the
 7 subpoena or order is subject to this Protective Order (such notification shall include
 8 a copy of this Stipulated Protective Order); and

9 (c) cooperate with respect to all reasonable procedures sought to be
 10 pursued by the Designating Party whose Protected Material may be affected.²

11 If the Designating Party timely seeks a protective order, the Party served with
 12 the subpoena or court order shall not produce any information designated in this
 13 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 14 EYES ONLY" before a determination by the court from which the subpoena or
 15 order issued, unless the Party has obtained the Designating Party's written
 16 permission. The Designating Party shall bear the burden and expense of seeking
 17 protection in that court of its confidential material – and nothing in these provisions
 18 should be construed as authorizing or encouraging a Receiving Party in this action
 19 to disobey a lawful directive from another court.

20 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
 21 PRODUCED IN THIS LITIGATION

22 (a) The terms of this Order are applicable to information produced by a
 23 Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY
 24 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced

25
 26
 27 ² The purpose of imposing these duties is to alert the interested parties to the
 28 existence of this Protective Order and to afford the Designating Party in this case an
 opportunity to try to protect its confidentiality interests in the court from which the
 subpoena or order issued.

1 by Non-Parties in connection with this litigation is protected by the remedies and
 2 relief provided by this Order. Nothing in these provisions should be construed as
 3 prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to
 5 produce a Non-Party's confidential information in its possession, and the Party is
 6 subject to an agreement with the Non-Party not to produce the Non-Party's
 7 confidential information, then the Party shall:

8 1. promptly notify in writing the Requesting Party and the Non-
 9 Party that some or all of the information requested is subject to a confidentiality
 10 agreement with a Non-Party;

11 2. promptly provide the Non-Party with a copy of the Stipulated
 12 Protective Order in this litigation, the relevant discovery request(s), and a
 13 reasonably specific description of the information requested; and

14 3. make the information requested available for inspection by the
 15 Non-Party.

16 (c) If the Non-Party fails to object or seek a protective order from this
 17 court within 14 days of receiving the notice and accompanying information, the
 18 Receiving Party may produce the Non-Party's confidential information responsive
 19 to the discovery request. If the Non-Party timely seeks a protective order, the
 20 Receiving Party shall not produce any information in its possession or control that
 21 is subject to the confidentiality agreement with the Non-Party before a
 22 determination by the court.³ Absent a court order to the contrary, the Non-Party
 23 shall bear the burden and expense of seeking protection in this court of its Protected
 24 Material.

25 12. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 ³ The purpose of this provision is to alert the interested parties to the existence of
 28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to
 protect its confidentiality interests in this court.

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
2 Protected Material to any person or in any circumstance not authorized under this
3 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
4 writing the Designating Party of the unauthorized disclosures, (b) use its best
5 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
6 person or persons to whom unauthorized disclosures were made of all the terms of
7 this Order, and (d) request such person or persons to execute the "Acknowledgment
8 and Agreement to Be Bound" that is attached hereto as Exhibit A.

9 13. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain
12 inadvertently produced material is subject to a claim of privilege or other
13 protection, the obligations of the Receiving Parties are those set forth in Federal
14 Rule of Civil Procedure 26(b)(5)(B).

15 14. **MISCELLANEOUS**

16 14.1 **Right to Further Relief.** Nothing in this Order abridges the right of any
17 person to seek its modification by the court in the future.

18 14.2 **Right to Assert Other Objections.** By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in
21 this Stipulated Protective Order. Similarly, no Party waives any right to object on
22 any ground to use in evidence of any of the material covered by this Protective
23 Order.

24 14.3 **Export Control.** Disclosure of Protected Material shall be subject to all
25 applicable laws and regulations relating to the export of technical data contained in
26 such Protected Material, including the release of such technical data to foreign
27 persons or nationals in the United States or elsewhere. The Producing Party shall be
28 responsible for identifying any such controlled technical data, and the Receiving

1 Party shall take measures necessary to ensure compliance.

2 14.4 Filing Protected Material. Without written permission from the
3 Designating Party or a court order secured after appropriate notice to all interested
4 persons, a Party may not file in the public record in this action any Protected
5 Material. A Party that seeks to file under seal any Protected Material must comply
6 with Civil Local Rule 79-5 and Judge Walter's Standing Order. Protected Material
7 may only be filed under seal pursuant to a court order authorizing the sealing of the
8 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and Judge
9 Walter's Standing Order, a sealing order will issue only upon a request establishing
10 that the Protected Material at issue is privileged, protectable as a trade secret, or
11 otherwise entitled to protection under the law. If a Disclosing Party's request to file
12 Protected Material under seal pursuant to Civil Local Rule 79-5(d) or Judge
13 Walter's Standing Order is denied by the court, then the Receiving Party may file
14 the Protected Material in the public record unless otherwise instructed by the court.

15 15. FINAL DISPOSITION

16 Within 60 days after the final disposition of this action, as defined in
17 paragraph 4, each Receiving Party must return all Protected Material to the
18 Producing Party or destroy such material. As used in this subdivision, "all Protected
19 Material" includes all copies, abstracts, compilations, summaries, and any other
20 format reproducing or capturing any of the Protected Material. Whether the
21 Protected Material is returned or destroyed, the Receiving Party must submit a
22 written certification to the Producing Party (and, if not the same person or entity, to
23 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
24 appropriate) all the Protected Material that was returned or destroyed and (2)
25 affirms that the Receiving Party has not retained any copies, abstracts,
26 compilations, summaries or any other format reproducing or capturing any of the
27 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
28 archival copy of all pleadings, motion papers, trial, deposition, and hearing

1 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
2 reports, attorney work product, and consultant and expert work product, even if
3 such materials contain Protected Material. Any such archival copies that contain or
4 constitute Protected Material remain subject to this Protective Order as set forth in
5 Section 4 (DURATION).

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
7

8 Dated:

John A. O'Malley, Bar No. 101181
Lesley E. Swanson, Bar No. 271903
Fulbright & Jaworski L.L.P.
555 South Flower Street, Forty-First Floor
Los Angeles, California 90071
Telephone: (213) 892-9200
Facsimile: (213) 892-9494
jomalley@fulbright.com
lswanson@fulbright.com

Michael E. Wilson, Tx Bar No. 21704650
(admitted pro hac vice)
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010
Telephone: (713) 651-5151
Facsimile: (713) 651-5246
mikewilson@fulbright.com

18
19 By _____
20

21 Attorneys for Defendants and Counter-
22 Claimants Sasol Wax North America Corp.
and Sasol Wax GmbH

23 Dated: May 1, 2012

24 Karen V. Weil, Bar No. 145066
David N. Weiss, Bar No. 180673
Knobbe, Martens, Olson & Bear, LLP
10100 Santa Monica Boulevard, Suite 1600
Los Angeles, California 90067
Telephone: (310) 551-3450
Facsimile: (310) 551-3458
kweil@kmob.com
dweiss@kmob.com

1 Joseph F. Jennings, Bar No. 145920
2 Thomas P. Krzeminski, Bar No. 213714
3 Karen M. Cassidy, Bar No. 272114
4 **Knobbe, Martens, Olson & Bear, LLP**
5 2040 Main Street, Fourteenth Floor
6 Irvine, California 92614
7 Telephone: (949) 760-0404
8 Facsimile: (949) 760-9502
9 jjennings@kmob.com
10 tpk@kmob.com
11 karen.cassidy@kmob.com

12 By _____
13 Attorneys for Plaintiffs, Counter-Defendant
14 Henry Company LLC, Henry Company
15 Canada, Inc.

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17
18
19
20
21
22
23
24
25
26
27
28
Dated: May 8, 2012

/s/
The Honorable Carla Woehrle

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, [print or type full name], of [print
5 or type full address], declare under penalty of perjury that I have read in its entirety
6 and understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Central District of California in the case of Henry Company
8 LLC, Henry Company Canada, Inc. v. Sasol Wax North America Corp., Sasol Wax
9 GmbH, Case No. 2:11-cv-06444-JFW-CW. I agree to comply with and to be bound
10 by all the terms of this Stipulated Protective Order, and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in
13 any manner any information or item that is subject to this Stipulated Protective
14 Order to any person or entity except in strict compliance with the provisions of this
15 Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Central District of California for the purpose of enforcing the terms of this
18 Stipulated Protective Order, even if such enforcement proceedings occur after
19 termination of this action.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]